

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JUAN JESUS MONTALVO,

Plaintiff,

v.

No. CIV-14-493 LAM

**CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,**

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES AND COSTS
PURSUANT TO THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)**

THIS MATTER is before the Court on Plaintiff's *Opposed Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, with Memorandum in Support* (Doc. 26), filed November 5, 2015. Defendant filed a response to the motion on November 18, 2015 indicating therein that the parties have stipulated to attorney fees in the amount of **\$7,000.00** and costs in the amount of **\$400.00**. [Doc. 27]. Therefore, the Court **FINDS** that Plaintiff's motion shall be **GRANTED in part**.

IT IS THEREFORE ORDERED that Plaintiff's motion is **GRANTED in part**, and that Plaintiff is authorized to receive **\$7,000.00** in attorney fees and **\$400.00** in costs for payment to his attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's attorney shall refund

the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 n.4 (2010) (explaining that, if a claimant's counsel is ultimately granted attorney fees under § 406(b) out of the claimant's benefit award, the claimant's attorney must refund to the claimant the amount of the smaller fee).

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE

Submitted By: *(Prior to modification by the Court)*

/s/Michael D. Armstrong

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Email Approval on 12/09/15

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